

SOUTH DAKOTA RYO CIGARETTE MANUFACTURER REQUIREMENTS

Effective July 1, 2012, any person that maintains or provides a machine at a retail establishment that enables any consumer to process tobacco or any product that is made or derived from tobacco into a roll or tube is deemed to be a manufacturer of cigarettes under South Dakota state law. This memorandum will explain the requirements that must be met to be a manufacturer as of July 1, 2012, and will provide answers to some frequently asked questions regarding the implications of the new statutory requirements pertaining to RYO machines.

REQUIREMENTS

Cigarette Manufacturer/Distributor License

- A Cigarette Manufacturer/Distributor license shall be required per SDCL 10-50-9. For purposes of state law, a manufacturer of tobacco products falls within the definition of a distributor.
- An annual license fee of \$150 is required to obtain the license.
- The application form can be obtained on the Department of Revenue website at: <http://www.state.sd.us/drr2/prospectax/tobacco/RYO.htm>

Brand Certification

- All tobacco brands must be certified (See SDCL 10-50-72 to 10-50-92, inclusive, and the escrow provisions of SDCL ch. 10-50B).
- Certification forms can be obtained on the Department of Revenue website at: <http://www.state.sd.us/drr2/prospectax/tobacco/RYO.htm>
- If you are using a roll-your-own tobacco brand in the RYO machines that is already certified to sell in South Dakota, completion of the certification forms for that tobacco brand is not necessary. A list of all certified tobacco brands can be found at: http://www.state.sd.us/drr2/prospectax/compliantmanufacturers/brand_by_name.pdf
- Using pipe tobacco, or any other type of tobacco that has not been previously certified to sell in South Dakota, will require completion of the certification process and compliance with the escrow provisions of SDCL ch. 10-50B. Contact the Special Taxes division if you have any questions.

Packaging

- All cigarettes produced at RYO outlets must be in packages of 20 or 25 and must have a South Dakota cigarette excise tax stamp affixed to the package (See SDCL 10-50-2 and SDCL 10-50-3).
- Cigarette excise tax stamps are purchased from the Department of Revenue and are sold in rolls of 30,000 or individual sheets of 150.

- Tax stamps must be heat-affixed to the cigarette packaging. Stamping machines and hand stamp irons are available from Meyercord Revenue, Inc., who is the current supplier of cigarette excise tax stamps to South Dakota.

Labeling Requirements

- All tobacco product purchased from a certified manufacturer must include a product label that includes the tobacco brand and name of manufacturer and the business name and address of the RYO manufacturer.
- Pipe tobacco or other tobacco product that is not already certified to sell in South Dakota must meet the Brand Certification requirements AND be labeled with your own tobacco brand name, business name, and address.

Reporting Requirements and Record Keeping Requirements

- South Dakota has monthly reporting requirements for purchases of other tobacco products (OTP), cigarette stamps, and cigarette sales (SDCL 10-50-39 and SDCL 10-50-61), as well as quarterly reporting requirements for sales of Non-Participating Manufacturer (NPM) tobacco product (SDCL 10-50-80). All required reporting forms can be located at:
<http://www.state.sd.us/drr2/prospectax/tobacco/RYO.htm>
- Records of tobacco purchased, manufactured, or sold must be kept for three (3) years. All NPM brand records must be kept for six (6) years.

FREQUENTLY ASKED QUESTIONS (FAQ)

- Do the new manufacturer requirements include table-top RYO machines?
 - Yes, if the table-top RYO machine is used at a retail establishment for the purpose of manufacturing (rolling) cigarettes.
- Can I continue to sell RYO machines at my retail smoke shop?
 - Yes, these machines can be sold to an individual for personal use.
- Can I just use pipe tobacco and skip all of the certification requirements?
 - No. All pipe tobacco used in RYO machines at a retail establishment will need to be certified and meet all of the requirements of SDCL 10-50-72 to 10-50-92, inclusive, and the escrow provisions of SDCL ch. 10-50B.
- Do I have to pay both the OTP tax and the cigarette excise tax on tobacco used in my RYO machines?
 - No. You will still pay the OTP tax and report it on the Monthly OTP tax return form upon receipt of the tobacco as required under SDCL 10-50-61. If the tobacco is subsequently sold in cigarette form (e.g. used in a RYO machine at a retail establishment) and becomes subject to the cigarette excise tax, you will be

permitted to deduct any OTP tax paid on that tobacco from your monthly return. Contact the Special Taxes division if you have questions about how to properly report these taxes.

- How much do cigarette tax stamps cost?
 - Twenty pack stamps are \$1.53 per stamp and are sold in individual sheets of 150 stamps for \$229.50 or in rolls of 30,000 stamps for \$45,900.00.
 - Twenty-five pack stamps are \$1.92 per stamp and are only sold in individual sheets of 150 stamps for \$288.00
 - Effective July 1, 2012, a stamping discount of one percent (1%) will apply to all sales of cigarette tax stamps. This will reduce the cost of a sheet of twenty pack stamps to \$227.20.
 - In addition to the cost of the tax stamps, there is also a fee for the stamping paper of \$0.14 per sheet or \$27.90 per roll for twenty pack stamps, and \$1.78 per sheet for twenty-five pack stamps.
- What if a customer just wants to purchase tobacco and tubes, but not use the RYO machine at my retail establishment?
 - Sales of this type will need to be tracked and the proper OTP tax must be reported and remitted to the Department of Revenue on the Monthly OTP tax return form. This may require a retail establishment to program its cash registers to separate this type of transaction from the typical “tobacco, tubes, and machine rental” transaction.
- How long do I have to comply with the fire safe cigarette (FSC) standards?
 - All cigarettes manufactured at a RYO outlet will need to meet the fire safety standards of SDCL ch. 34-49 by July 1, 2014. Contact the South Dakota Department of Public Safety, Office of the State Fire Marshal, for additional information.
- Can I give away the cigarettes and just charge for running the RYO machine without complying with the requirements of a manufacturer?
 - No. Pursuant to HB 1138, “The product produced by the machine is deemed to be a cigarette that was **sold** to a consumer for purposes of this chapter...” (emphasis added).